

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF LOCUST) APPEAL NO. 07-A-2195
GROVE GRANGE #118 from the decision of the)
Board of Equalization of Ada County for tax year) FINAL DECISION
2007.) AND ORDER

CHARITABLE EXEMPTION APPEAL

THIS MATTER came on for hearing January 16, 2008, in Boise, before Hearing Officer Steven Wallace. Board Members Lyle R. Cobbs, David E. Kinghorn and Linda S. Pike participated in this decision. Attorney Kirsten R. Thompson, Bob Waitley and Dell Boston appeared for Appellant. Deputy Assessor Craig Church and Deputy Prosecutor Lorna Jorgensen appeared for Respondent Ada County. This appeal is taken from a decision of the Ada County Board of Equalization (BOE) denying exempt status to property described as Parcel No. S1130120700.

The issue on appeal is whether the subject property qualifies for an exemption from property taxes pursuant to Idaho Code § 63-602C, the charitable exemption.

The decision of the Ada County Board of Equalization denying exemption is reversed.

FINDINGS OF FACT

The 2007 total BOE assessed value of the subject property is \$537,300. At hearing, the County modified its position to include a partial exemption grant for what it found to be non leasable area, that is area used exclusively by the Grange and not leased to or used by others. The taxable value was therefor amended to \$437,600. Appellant requests a full exemption from property taxes.

The subject property is a 6,456 square foot building constructed in 1948 and the associated land. The property is owned by a local (subordinate) entity of a national fraternal

organization. Appellant has been a local chapter (affiliate) of the National Grange since 1918 or before. Specifically since the 1940's, the subject property has been owned by the non-profit Locust Grove Grange No. 118 Patrons of Husbandry, Inc. (LGG). Apparently for all the years of ownership prior to 2007, the property enjoyed exempt status.

A full exemption was denied for 2007 where the County determined subject was not exclusively used for the stated purposes for which LGG was organized. LGG has not updated the wording in its articles of incorporation in many decades and contends such amendment is unnecessary. Generally, there is no dispute with LGG's qualification for the charitable exemption as a non-profit, fraternal organization, i.e. the ownership standard is met. The County contends LGG is organized strictly as an agriculture-related entity, and that under the exemption statute, the subject property must be used exclusively in that regard to be exempted. So the County in effect found the charitable exemption's use requirement was not met on those portions of the property not exclusively used by, or reserved to, the pursuits of LGG.

Appellant stipulated it is still active in pursuing the advancement of agricultural interests and the betterment of its members. Recent years however, have seen a marked increase in the advancement of individual's and community interests not directly tied to agriculture. This current use of the subject property is argued to be fully consistent with LGG's mission and organizational papers.

Appellant provided the following statement in its pre-hearing brief "The purpose of the Grange . . . has been to provide its members and the community at large with public service and charitable projects that benefit the community and Ada County." The following is from LGG's articles of incorporation and is argued to allow, and be fully consistent with, Appellant's intermittent lease of portions of subject for use as a community and club meeting hall.

Article II. The expressed powers and purposes of this corporation shall be . . . (f) To sell, assign, or lease the same and to do and perform any and all acts in furtherance and to the benefit of the agriculture industry and the Fraternal order of Patrons of Husbandry [The National Grange] which are not contrary to the laws of Idaho or of the United States.

Modern mission statements from the State and National Grange entities are more specific as to serving and supporting the best interests of individual's and communities.

Appellant gave numerous examples of the subject property use and its activities as a chapter of the National Grange. LGG's current membership is 55 individuals who pay annual dues of \$22. The members are 75 or more years of age. The annual dues are divided between The National Grange (\$6) and the State Grange (\$16) organizations. Local members volunteer their time and service to LGG pursuits and in support of the various users of the subject property. There are no salaried employees or paid positions.

Many property users pay fees toward supporting property maintenance and upkeep costs like utility expenses. Some users are not charged for use of the property. Collected fees do not cover the cost of the land and building or generate a profit. Thus the user fees are well below market rental rates. Community meeting space is reportedly limited. Appellant noted it daily turns away interested users due to the high demand. The County considered the outside use connected with the fees to be a commercial use under the statute.

An exhibit from Appellant listed the property users for 2006 and the fees charged when applicable. User events included multiple churches' gatherings, homeowner associations meetings, municipality meetings, Girl Scouts and 4-H activities, family gatherings such as funeral dinners and reunions, and bagpiper club events. It was noted most of the organizations using the property are tax exempt. A typical fee for a single gathering looked to be about \$40 to \$50. Government use of the property for a meeting, or all day as a polling place, was provided free

or in some instances charged \$25. Donations were received in loose connection with some of the free property use provided to individuals or community groups. LGG occasionally receives financial project support from the State and National Grange levels.

Appellant provides a number of other services to the community including assistance to individuals in crisis. No portion of the property has been leased for a long-term commercial purpose.

The only recent debt on the subject property was taken out to pay legal fees associated with this appeal. Appellant reports due to a lack of funding, it would likely cease to exist if it had to pay property taxes. Attorney fees and costs are sought by Appellant should it prevail. It is noted the Board's administrative rules are silent on the matter of awarding legal fees.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value or exempt status. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

The exemption claim is brought under Idaho Code § 63-602C. The exemption statute is presented below in its entirety.

Property exempt from taxation – Fraternal, benevolent, or charitable corporations or societies.

The following property is exempt from taxation: property belonging to any fraternal, benevolent, or charitable corporation or society, the World War veteran organization buildings and memorials of this state, used exclusively for the purposes for which such corporation or society is organized; provided, that if any building or property belonging to any such corporation or society is leased by such owner or if such corporation or society uses such property for business purposes from which a revenue is derived which, in the case of a charitable organization, is not directly related to the charitable purpose for which such charitable organization exists, then the same shall be assessed and taxed as any other property, and if any such property is leased in part or used in part by such corporation or society

for such purposes the assessor shall determine the value of the entire building and the value of the part used or leased for commercial purposes. If the value of the part used for commercial purposes is determined to be three percent (3%) or less than the value of the entirety, the whole of said property shall remain exempt. If the value of the used for commercial purposes is determined to be more than three percent (3%) of the value of the entirety, the assessor shall assess such proportionate part of such building including the value of the real estate as is so leased or used for such purposes, and shall assess all merchandise kept for sale, and the trade fixtures used in connection with merchandise kept for sale, and the trade fixtures used in connection with the sale of such merchandise; *provided however, that the lease or use of any property by any such corporation or society for athletic or recreational facilities, residence halls or dormitories, meeting rooms or halls, auditoriums or club rooms within the purposes for which such corporation or society is organized, shall not be deemed a business or commercial purpose, even though fees or charges be imposed and revenue derived therefrom. (Emphases added.)*

The exemption has two initial requirements: first, the property must belong to a charitable organization and second, that the property be used exclusively for the purpose for which the organization was organized. *Student Loan Fund of Idaho, Inc. v. Payette County*, 138 Idaho 684, 69 P.3d 104 (2003). LGG is understood to be a charitable organization within the meaning of the statute. The denial of exemption focused on the property's use, specifically the use by those other than Appellant and the fees collected in some instances for that use.

It is fair to say that a large portion of the subject property has a dual use, the periodic use by LGG for its own purposes, and the use by outside interests. The property use by others, and even the collection of fees, is not an automatic bar. The fees here were not substantial nor at market rates, nor did the Board find where they generated a profit. The fees only went to a portion of the total cost of making the property available for use. The key question was raised by the County and regarded whether or not the use by others was within the stated purposes for which Appellant was organized. This goes to the element of exclusive use. Certainly where the use by others of the Grange Hall was extensive, even exceeding LGG's use, this is a critical question. If the outsider use is consistent with LGG's stated purposes, then the next question

becomes was the use commercial under the statute, or charitable.

The burden is on LGG to clearly establish a right of exemption and the terms of the exemption must be so specific and certain as to leave no room for doubt. *Id.*; *Evangelical Lutheran Good Samaritan Soc. v. Latah Co.*, 119 Idaho 126, 129, 804 P.2d 299, 302 (1990).

Here the use by others was consistent with LGG's stated purposes. The Board finds Appellant's own articles of incorporation and its affiliate role with The National Grange clearly envision coordination with and the support of others to strengthen individuals and communities. We note the local Grange corporation and its purposes must conform to those of The National Grange (Chapter 1, Article V, of The National Grange Constitution.) Even a strict focus on LGG's Article II, section (f) bears this out. Subsection (f) provides in part "to do and perform any and all acts in furtherance and to the benefit of . . . the Fraternal order of Patrons of Husbandry [The National Grange]." The National Order has identified as its (and its affiliates') "general objectives" the following.

United by the strong and faithful tie of an agricultural fraternity, yet welcoming all of good moral character to membership we mutually resolve to labor for the good of our Order, our country, and mankind.

We heartily endorse the motto, "In essentials, unity; in non-essentials, liberty; in all things, charity."

The Board finds the above to be a broad charter, one which allows the types of community service being pursued by LGG through its sharing of the subject property with the community. No profits are recognized from fees. No space is permanently leased out for a commercial purpose. The charitable exemption specifically allows for certain use by others as emphasized in the statute above. The subject property's recent use was consistent with the stated purposes of Appellant and pursuant to the charitable exemption statute. Therefore the Board reverses the BOE decision denying the exemption.

COSTS AND FEES

Appellant requested legal costs and attorney fees associated with this appeal. There was no legal authority argued or cited in connection with the request. Nor is the Board aware of legal authority giving it the power to order such charges. We hold the County Board of Equalization did not act improperly in reviewing subject's exempt status for 2007. Appellant did charge fees for the use of its property and this could be grounds for disqualification. We have held the fees charged do not preclude a grant of exemption. The request for legal fees and costs will be denied.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Ada County Board of Equalization concerning the subject parcel be, and the same hereby is, REVERSED so holding the subject property is exempt from taxation.

IT IS FURTHER ORDERED Appellant's request for legal costs and attorney fees be DENIED.

IT IS FURTHER ORDERED that any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Appellant.

MAILED April 30, 2008